IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.14 of 1996
Date of decision:21.11.2006

The Commissioner of Income Tax,Patiala

....Petitioner

versus

M/s Roadmaster Industries of India, Rajpura

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Dr. N.L.Sharda, Advocate, for the revenue.
Mr. Sanjay Bansal, Advocate, for the respondent.

JUDGMENT:

Following question of law has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, arising out of its order dated 18.7.1995 in ITA No.438/Chandi/90, for the assessment year 1987-88:-

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that section 147 (b) was not applicable, inasmuch as the information available at the time of original assessment could not be re-appraised by the Assessing Officer on the ground that excessive relief had been allowed to the assessee under section 80HH of the Act?"

Assessment in the case of the assessee was made on 23.3.1988 allowing deduction under section 80HH of the Income Tax Act, 1961 (for short, 'the Act'). Subsequently, notice under section 148 of the Act was issued to the assessee on the ground that excessive relief was given and deduction allowed was liable to be reduced. Thereafter, deduction was reduced vide order dated 12.4.1989. The assessee preferred an appeal and submitted that initiation of proceedings under section 147(b) of the Act was not legally permissible. The appellate authority dismissed the appeal. The Tribunal upheld the plea of the assessee following judgment of the Hon'ble

Supreme Court in **Indian and Eastern Newspaper Society v. CIT, New Delhi,** (1979) 119 ITR 996(SC), judgment of Bombay High Court in **Air India v. V.K.Srivastava, CIT and others,** (1995) 213 ITR 739 and judgment of Gujarat High Court in **Hotel Appolo v. P.S.Rashtrapal, Income Tax Officer**, (1995) 213 ITR 762. It was held that there was no evidence on record to show as to what further information came into possession of the Assessing Officer and order of re-assessment was based on re-appraisal of information already available.

We have heard learned counsel for the parties and perused the findings recorded.

We have perused the order of re-assessment, wherein only reason mentioned is that after completion of assessment, it came to notice that deduction had not been correctly allowed.

The issue was reviewed by the Hon'ble Supreme Court in **Phool Chand Bajrang Lal v. ITO**, (1993) 203 ITR 456 and it was observed:-

> "An Income tax Officer acquires jurisdiction to reopen an assessment under section 147(a) read with section 148 of the Income Tax Act, 1961 only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons, which he must record, to believe that, by a reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for each assessment during the concluded assessment proceedings, any part of its income, profits or gains chargeable to income tax had escaped assessment, he may start reassessment proceedings either because some fresh facts had come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts."

The matter has also been considered by this Court in CWP No.398 of 2006, T**he Punjab State Cooperative Agricultural development Bank Limited, Chandigarh v. CIT-I and another,** decided on 18.10.2006.

In view of the above, we are of the view that the Tribunal rightly held that initiation of proceedings for the re-assessment was not permissible in absence of any fresh facts having come to light which were

not previously disclosed or some information with regard to facts previously disclosed exposing untruthfulness of facts disclosed by the assessee being in possession of the Assessing Officer. Mere change of opinion or drawing of a different inference from the same facts as were earlier available, could not be a ground for re-assessment.

For the above reasons, the question referred is answered against the revenue and in favour of the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

November 21, 2006 (Rajesh Bindal)
'gs' Judge